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The Indian Penal Code
The Code Of Criminal Procedure, 1973
Section 420 in The Indian Penal Code

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Delhi District Court

Paramvir Singh Narang vs M/S. Unitech Ltd on 10 June, 2016

Author: Sandeep Yadav

IN THE COURT OF SH. SANDEEP YADAV, ADDITIONAL
SESSIONS JUDGE3 (SOUTH), SAKET COURTS, NEW DELHI

Cr1. Revision No. 19/15

Paramvir Singh Narang
R/o. G17/25, Qutub Enclave
DLF, PhaseI, Gurgaon,
Haryana.

.... Petitioner

Vs.

1. M/s. Unitech Ltd.
through its Managing Director
P7, Sector 18, Noida - 201 301
U.P.

Also at : 6, Community Centre, Saket
New Delhi17

2. Ramesh Chandra
Whole time Director M/s. Unitech Ltd.
C41, Maifare Gardens, Hauz Khas
New Delhi110016.

3. Ajay Chandra
Managing Director M/s. Unitech Ltd.
C41, Maifare Gardens, Hauz Khas
New Delhi110016.

4. Sanjay Chandra
Managing Director M/s. Unitech Ltd.

CA No.19/15

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Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.
C41, Maifare Gardens, Hauz Khas
New Delhi110016.

5. Anil Harish

Director M/s. Unitech Ltd.
13, CCI Chambers, 1st Floor,
Dinshaw Wacha Road, Mumbai 400020

6. Minoti Bahri

Director, M/s. Unitech Ltd.
R87, Greater Kailash I
New Delhi 110048

7. Ravinder Singhania

Director, M/s. Unitech Ltd.
P24, Green Park Extension
New Delhi 110016

8. Sanjay Bahadur

Director, M/s. Unitech Ltd.
3B901/2, Green Acre CHS Ltd PL325
Lokhanwala Complex, Andheri (West)
Mumbai - 400053.

.... Respondents

Date of Institution : 30.06.2015

Final arguments heard on : 27.05.2016

Order pronounced on : 10.06.2016

CA No.19/15

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Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

O R D E R

1. Correctness, legality and propriety of order dated 13.04.2015 passed by learned Additional Chief Metropolitan Magistrate (South) is under challenged in this revision petition filed by Paramvir Singh Narang against M/s. Unitech Ltd. and its Managing Director/Directors.

2. The case propounded by petitioner before learned Additional Chief Metropolitan Magistrate (South) is that on 18.04.2006, petitioner booked a flat in the project of respondents for a total sale consideration of Rs.40,83,479/- and accordingly, complainant was allotted an apartment bearing Apartment no. 1801 on the 17th floor, Tower 3, Unitech Cascades at Greater Noida. Terms and conditions were laid down in the agreement/allotment letter dated 18.04.2006. The payment schedule was mentioned in Annexure A of allotment letter. Representatives of accused induced and lured the complainant to opt for cash down plan promising that possession of apartment will be delivered by 30.04.2008 and accordingly, complainant opted for cash down payment and after availing loan from ICICI Bank, complainant paid a sum of Rs. 39,07,582/- to Unitech Ltd. on 01.06.2006. On 07.12.2007, complainant is stated to have received a letter from accused CA No.19/15 3/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

company stating that possession of apartment would be handed over to him in the 4th quarter of 2008. It is alleged in the complaint that despite written as well as verbal assurances and promises, accused has failed to give the possession of apartment to complainant despite having received almost entire sale consideration in 2006 itself. Thereafter, this complaint was filed seeking

prosecution of accused persons u/s. 420/403/406/409 IPC.

3. Complainant examined himself as CW1 to substantiate the averments of complaint and proved necessary documents. The said complaint was dismissed by learned Additional Chief Metropolitan Magistrate (South) u/s. 203 Cr.PC vide impugned order dated 13.04.2015.

4. I have heard Mr. Rakesh Kumar, learned counsel for petitioner as well as Mr. Vinod Sharma, learned counsel for respondents and carefully perused the record.

5. Rights and liabilities of parties are governed by allotment of apartment letter dated 18.04.2006. It is laid down in clause 4(a) of allotment letter that possession of apartment is proposed to be delivered by the company (respondent no.1) to the allottee (s) by 30th April 2008 subject to Force Majeure circumstances beyond the control of the company, and upon registration of Lease Deed/Sub Lease Deed/Tripartite Deed, provided all amounts due and payable CA No.19/15 4/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

by the Allottee(s) as provided herein have been paid to the company. It is, however, understood between the parties that various blocks/towers comprised in the complex shall be ready and completed in phases and after the completion, the apartments will be handed over to the respective allottee(s) of different towers.

6. Consequence of default on the part of respondents is governed by clause 4 (e) which says that if for any reason the company is not in a position to offer the apartment altogether, the company shall offer the allottee (s) an alternative property or refund the amount in full with simple interest @ 10% per annum without any further liability to pay damages or any other compensation on this account.

7. Complainant through his testimony has proved that entire payment as per payment schedule annexed with allotment letter has been made by petitioner. Documents available at page no.52 to 55 which have been duly exhibited in the testimony of CW1 before trial Court, evidenced entire payment of Rs.39,07,582/ made by petitioner to respondents. After receiving this payment, it was incumbent upon respondents to hand over the possession of allotted flat to petitioner as petition has stated in the complaint that he was induced by respondents to opt for cash down plan and for this purpose, he obtained loan from ICICI Bank. If for no reason, CA No.19/15 5/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

respondents were not able to deliver the possession of the apartment to petitioner, respondents were obliged to return the entire amount with simple interest @ 10 % per annum as per clause 4 (e) of allotment letter. It is clear from the averment of complaint and testimony of CW1 that respondents have neither handed over possession of the apartment to petitioner within the stipulated period nor have they refunded the amount with interest. Infact, legal notice issued by petitioner in this regard went unheeded. Therefore, a clear case of cheating is made out against respondents as respondents cheated the complainant and dishonestly induced him to pay a sum of Rs.39,07,582/ to them on the promise of handing over the possession of apartment.

8. In the impugned judgment, learned Additional Chief Metropolitan Magistrate (South) has referred to AIR 1958 SC 56 - Rama Swami Nadar Vs. State of Madras in support of the observation that in the absence of any allegation of entrustment of property in complaint or in evidence, offence of criminal breach of trust is not made out. These observations contained in para 10 of the impugned judgment are against the record as complainant in para 8 of the complaint stated that accused being the director of respondent company were fully aware that the company is not going to deliver apartment to complainant and is going to CA No.19/15 6/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

misappropriate his money.

9. Regarding the offence of cheating, learned Additional Chief Metropolitan Magistrate (South) referred to AIR 2011 SC 2258 - Joseph Salvaraj Vs. State of Gujrat, AIR 2000 SC 2341 - Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. and AIR 2008 (SC) 251 Inder Mohan

Goswami & Anr. Vs. State of Uttaranchal & Ors, to bolster the view point that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

10. In the present case, respondents as per the averment of complaint and evidence adduced before learned Additional Chief Metropolitan Magistrate (South), induced the complainant to opt for cash down scheme and being persuaded by such allurement and inducement, complainant paid a sum of Rs.39,07,582/ to respondents so that possession of apartment/flat can be handed over to petitioner at the earliest. Respondents in allotment letter agreed that possession of apartment will be handed over to petitioner by 30.04.2008 and in case respondents are not in a position to offer the apartment altogether, the company shall offer the allottee (s) an alternative property or refund the amount in full CA No.19/15 7/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

with simple interest @ 10% per annum without any further liability to pay damages or any other compensation on this account.

11. The question that arises for consideration in such cases is as to how the intention of respondent can be assessed. In such cases, it is the conduct of respondent subsequent to payment by petitioner which is relevant for determining as to whether respondents were having any intention to cheat the complainant since the very inception of transaction. Since, respondents after receiving total agreement payment of Rs. 39,07,582/ neither offered possession of apartment nor refunded the amount with simple interest @ 10% per annum, it can be safely concluded that respondents were having guilty intention to cheat the petitioner from the very beginning of transaction. Even the legal notice issued by complainant to accused persons was not replied. Hence, [section 420 IPC](#) gets attracted to the facts of present case.

12. It has also been opined by learned Additional Chief Metropolitan Magistrate (South) in the impugned order that dispute between parties is civil dispute and complainant cannot invoke criminal proceedings by alleging cheating and reliance in this regard was placed upon Inder Mohan Goswami's case (supra) and AIR 2010 (SCW) 405 Md. Ibrahim & Ors. Vs. State of CA No.19/15 8/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.

Bihar & Anr. As can be seen from the complaint, presummoning evidence and conduct of respondents, the dispute between parties is not purely a civil dispute. Dispute thus has attributes of criminality. It is a settled law that if same transaction leads to civil and criminal consequences, the affected party can chose either or both remedy.

13. It is, therefore, concluded that learned Additional Chief Metropolitan Magistrate (South) erred in observing that it is a civil dispute and petitioner cannot maintain criminal proceeding by alleging cheating. The impugned order suffers from illegality and cannot be sustained. Accordingly, the revision petition is allowed and impugned order dated 13.04.2015 is set aside. Trial court is directed to proceed against respondents u/s. [420 IPC](#). Petitioner is directed to appear before trial court on 04.07.2016. Trial court record be sent back along with copy of this order. Revision file be consigned to Record Room.

Announced in open Court (Sandeep Yadav) Additional Sessions Judge3 (South) Saket Courts/New Delhi/10.06.2016 CA No.19/15 9/9 Paramvir Singh Narang Vs. M/s. Unitech Ltd. & Ors.